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No. 08-143

Supreme Court, U.S.
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In The

Supreme Court of the United States

CYRUS KIM,

Petitioner,

vs.

CITY OF FEDERAL WAY,
TARGA REAL ESTATE SERVICE, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Washington, Division 1

RESPONDENT CITY OF FEDERAL WAY'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioner raises seven (7) questions for review, none of which have been raised or argued prior and none of which make any sense. The issue in this case involves *whether the trial court correctly applied the statute of limitations.*

STATEMENT OF THE CASE

In November of 2006, Petitioner filed suit against the City of Federal Way, Washington, and Targa Real Estate Service. The basis of his suit arises from the impound of his car in October, 2000, and a subsequent municipal court ruling against him, wherein he was ordered to pay impound fees. Plaintiff's lawsuit alleged negligence, malpractice and "intentional tort." The City of Federal Way moved to dismiss on the basis of the statute of limitations and the motion was granted on January 19th, 2007. (Pet. App. A-7)

Petitioner appealed the dismissal of his suit and a Court of Appeals Commissioner found that the appeal was "clearly without merit." The court brought on its own, and granted, a motion on the merits upholding the dismissal on September 4th, 2007. (Pet. App. A-3 – A-6) Petitioner then brought a motion to modify the commissioners ruling, and the Court of Appeals denied the motion on November 30th, 2007. (Pet. App. A-2) Petitioner then appealed to the Washington Supreme Court, which declined to review the matter by order dated July 9th, 2008. (Pet. App. A-1)

REASONS FOR DENYING THE WRIT

1. ***This matter does not involve any type of federal question, jurisdictional controversy or any other compelling reason sufficient to warrant review.*** *See* **Supreme Court Rule 10.** Petitioner tries to raise issues of constitutional magnitude at this point in the litigation, but none of his newly constructed arguments help his cause.

On Page six (6) of the Petition, petitioner admits that his lawsuit was for negligence, malpractice and intentional tort, however, he "meant" to claim a constitutional violation because of "state action," a theory he found out about after the fact. Unfortunately for Petitioner, a civil rights claim is not an "action on a judgment" and the ten (10) year statute of limitations petitioner argues for, would not be applicable and the matter would still have to be dismissed as violative of the statute of limitations. Under Washington law, the statute of limitations applicable to ***§ 1983*** claims is three years. **RCW 4.16.080**; ***RK Ventures, Inc. v. City of Seattle*****, 307 F.3d 1045 C.A. 9 (2002).**

2. ***The trial court and the Washington Court of Appeals decided the matter correctly.*** Kim's first stated claim is for negligence. The statute of limitations for negligence is three years. **RCW 4.16.080(2).** Kim's Complaint is clear that the negligence he complains of is the action of the judge at the hearing in November of 2000.

Kim's second claim, legal malpractice, also has a three year statute of limitations. **RCW 4.16.080; *Huff v. Roach*, 125 Wn.App. 724, 729, 106 P.3d 268 (2005).** This claim is also based upon the court's ruling in the year 2000, and, therefore, is three years late.

There is another issue with legal malpractice, however – notice. The statute of limitations in a malpractice case does not begin until the claimant is aware of the events that would constitute negligence. **Once the facts are known, the statute begins to run.** *See,* ***Richardson v. Denend*, 59 Wn.App. 92, 795 P.2d 1192 (1990); *Peters v. Simmons*, 87 Wn.2d 400, 552 P.2d 1053 (1976); *Reichelt v. Johns-Manville Corp.*, 107 Wn.2d 761, 733 P.2d 530 (1987).** In this case, the facts were known to Kim in November of 2000 – he was at the hearing where he claims malpractice was committed. In fact, the case law states that entry of an adverse judgment places a plaintiff on notice that malpractice may have been committed. ***Richardson*, 59 Wn.App. at 98** (argument "that the statute of limitations is tolled until such time as a dissatisfied client obtains other legal counsel or engages in independent legal research to determine the propriety of the actions of his or her former counsel is not the law of Washington").

Kim's final claim was for "intentional tort." It is unclear exactly what he means, however, it is clear that he is complaining about the judge's actions in November of 2000. **RCW 4.16.080(2)** applies to actions for "*taking, detaining, or injuring personal*

property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated." Kim's "intentional tort" allegation is clearly an action for injuring person or property, hence, the statute of limitations is three years.

Kim did not offer the trial court judge any alternative causes of action in his objection to Federal Way's motion, although he argued that the Defendants misunderstood his claims.

Petitioner argues that a ten (10) year statute of limitations, pursuant to **RCW 4.16.020(2)**, should have applied in this matter. This statute applies

> **For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States, unless the period is extended under *RCW 6.17.020* or a similar provision in another jurisdiction.**

The matter at bar is *not* an action upon a judgment. Kim misunderstands the statute. **RCW 4.16.020(2)** contains a limitation for the enforcement of an action. ***Smith v. Whatcom County District Court*, 147 Wn.2d 98, 52 P.3d 485 (2002).** Petitioner's suit did not seek to enforce a judgement.

CONCLUSION

Petitioner's Petition for Writ of Certiorari is meritless and should be denied.

Dated September 2008

Respectfully submitted,

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